

§ 219.708

Medical Review Officer (MRO) of the railroad as required by part 40 of this title and this section. For purposes of this part, medical use of controlled substances by a covered employee is a legitimate medical explanation for presence of a controlled substance (i.e., a basis for declaring the result “negative”) only to the extent such use was consistent with § 219.103 of this part.

(b) The MRO shall complete review of test results within not more than 10 regular working days of receipt of the laboratory report or they shall be declared negative, unless any portion of the delay shall result from the unwillingness or inability of the employee to appear for an interview or provide documentation of prescription or other authorized use of medications. If the employee is responsible for such delay, the 10-day period may be extended by a period equal to the period attributed to the employee's delay. This paragraph shall not be read to bar reporting of a positive result if the employee, without a reasonable basis, fails to respond to an opportunity to provide supplementary information.

(c) After the MRO has reviewed the pertinent information and the laboratory assessment is verified as indicating presence of controlled substances without medical authorization consistent with § 219.103 of this part (and the review required by paragraph (b) of this section is completed), the MRO shall report the results to a designated railroad officer for action in keeping with the requirements of this part (or take appropriate action under the railroad's medical standards). The employee shall be provided a copy of the approved test results, or such results shall be dispatched by U.S. mail or other suitable means providing prompt delivery, not later than 24 hours following any adverse action.

(d) Test results reported as negative by the laboratory shall also be communicated through the MRO. The MRO shall promptly transmit the negative finding to the employee. If the MRO provides the railroad with negative test results in a nonaggregated manner, all such negative test results, including results involving medical use or administration of controlled substances or insufficiency of laboratory

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data, shall be transmitted to the designated railroad officer over the MRO's signature in a manner that does not disclose medical use of drugs which is permitted under § 219.103 of this part.

[54 FR 53259, Dec. 27, 1989, as amended at 59 FR 7464, Feb. 15, 1994]

§ 219.708 Employee requests for testing.

If the test result of the primary sample is positive, an employee may request that his or her split sample(s) be tested in accordance with the procedures specified in 49 CFR part 40.

[59 FR 7464, Feb. 15, 1994]

§ 219.709 [Reserved]

§ 219.711 Confidentiality of test results.

(a) A laboratory reporting results of tests conducted under this subpart shall report those results only to the designated Medical Review Officer of the railroad. The results shall not be disclosed by the laboratory to any other person, except that the laboratory may affirm the test result to the employee to whom the sample was identified. This paragraph shall not be read to bar normal access to analytical data for laboratory accreditation or certification processes.

(b) The MRO may not disclose medically approved drug use or administration information obtained under this part (whether ascertained through testing or reported by the employee or the employee's medical practitioner at the employee's request) to non-medical railroad personnel or any third party; however, nothing in this part bars use of such information by the railroad's medical officer in the context of an established medical qualifications program. This paragraph shall not be construed to permit medical disqualification of an employee based upon a laboratory report indicating presence of a controlled substance prior to completion of the MRO review, nor to limit the discretion of the railroad under § 40.33(c) of this chapter.

(c) No record of tests conducted subject to this subpart or information drawn therefrom shall be used or disseminated by the railroad or within the railroad for any purpose other than

providing for compliance with this part (and railroad rules consistent herewith), unless with the voluntary written consent of the employee. Such written consent shall specify the person to whom the information may be provided. Each railroad shall adopt and implement procedures to guard this information against unauthorized disclosure both within and external to the railroad company.

§ 219.713 [Reserved]

§ 219.715 Alcohol testing procedures.

(a) Each covered employee who is notified of selection for alcohol testing and who is not performing covered service at the time of notification shall proceed to the testing site immediately. The railroad shall ensure that an employee who is performing covered service at the time of notification shall, as soon as possible without affecting safety, cease to perform covered service and proceed to the testing site.

(b) Each railroad shall ensure that all alcohol testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol testing are made applicable to employers by this part.

[59 FR 7464, Feb. 15, 1994]

Subpart I—Annual Report

§ 219.801 Reporting alcohol misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA by March 15 of each year a report covering the previous calendar year (January 1–December 31), summarizing the results of its alcohol misuse prevention program.

(b) A railroad that is subject to more than one DOT agency alcohol regulation shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the railroad shall determine which

DOT agency regulation or rule authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each railroad shall ensure the accuracy and timeliness of each report submitted. The report shall be submitted on one of the two forms specified by the FRA.

(d) Each report that contains information on an alcohol screening test result of .02 or greater or a violation of the alcohol misuse provisions of subpart B of this part shall include the following elements (the “Alcohol Testing Management Information System Data Collection Form,” appendix D3 to this part):

(1) Number of covered employees by employee category (*i.e.*, train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3)(i) Number of screening tests by type of test (*i.e.*, pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(ii) Number of confirmation tests, by type of test and employee category.

(4) Number of confirmation alcohol tests indicating an alcohol concentration equal of .02 or greater but less than .04, by type of test and employee category.

(5) Number of confirmation alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).